

NTSB Order No. EA-4927

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 20th day of November, 2001

Respondent .

Docket SE-15814

Respondent has appealed from the oral initial decision of Administrative Law Judge William A. Pope, II, rendered at the conclusion of an evidentiary hearing held on April 20, 2000.¹ By that decision, the law judge upheld an order of the Administrator suspending respondent's mechanic certificate for 180 days for

¹An excerpt from the hearing transcript containing the initial decision is attached. Respondent, who appeared pro se at the hearing, now is represented by an attorney who filed a brief on appeal. The Administrator filed a reply.

violations of sections 43.13(a) and 43.15(a)(1) of the Federal Aviation Regulations (FAR), 14 C.F.R. Part 43, resulting from his failure to adequately perform and inspect maintenance work on a Cessna 210L aircraft.² As discussed below, we deny the appeal.

Respondent acknowledges that on April 7, 1999, as an employee of a repair station, he replaced the throttle control cable on civil aircraft N3458H, a Cessna 210L, in response to a discrepancy report that stated the throttle was stiff.³ Three

²The regulations state, in pertinent part:

§ 43.13 Performance rules (general).

(a) Each person performing maintenance, alteration, or preventive maintenance on an aircraft, engine, propeller, or appliance shall use the methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness prepared by its manufacturer, or other techniques, and practices acceptable to the Administrator, except as noted in § 43.16. He shall use the tools, equipment, and test apparatus necessary to assure completion of the work in accordance with accepted industry practices. If special equipment or test apparatus is recommended by the manufacturer involved, he must use that equipment or apparatus or its equivalent acceptable to the Administrator.

§ 43.15 Additional performance rules for inspections.

(a) *General.* Each person performing an inspection required by Part 91, 123, 125, or 135 of this chapter shall—

(1) Perform the inspection so as to determine whether the aircraft, or portion(s) thereof under inspection, meets all applicable airworthiness requirements....

³The complaint alleged that another individual, named Richardson, replaced the throttle control cable and respondent inspected the work. However, respondent stated that, in fact, it was he who replaced the cable and Richardson who inspected the work, but that they had signed the discrepancy report to indicate the opposite. Transcript (Tr.) at 105-06; Respondent's Answer, Paragraph 2. He admitted this was not proper procedure, but

days later, he performed an annual inspection on the aircraft and signed off on the inspection, returning the aircraft to service. Respondent's Answer, ¶ 5 and Tr. at 111.

It is further undisputed that, as the Administrator charged, "[o]n or about April 28, 1999, shortly after take-off, N3458H experienced mechanical problems, namely a loss of power, and attempted to return to Vero Beach; however, the plane crashed and was destroyed and the four occupants of the aircraft were killed." Complaint, ¶ 6.

The FAA Aviation Safety Inspector who responded to the accident testified about the condition of the wreckage. He stated that of the throttle control, fuel mixture, and propeller governor knobs, all located in close proximity to each other on the aircraft dashboard, only the throttle control was pulled out away from the console. Tr. at 48-49. Upon impact, the engine separated from the aircraft and came to rest about three to four feet from the fuselage, which should have caused the cables to stretch and pull the knobs into the dashboard. Tr. at 49-51, 53. The mixture control cable was pulled from its housing and the lever broke off, though the steel nut, cotter pin and nut were still on; the propeller governor cable stayed connected but was "significantly" stretched; the throttle control cable, however, remained unstretched, showed no signs of damage, was unattached to the throttle control assembly, and the throttle control arm

(..continued)
claimed they did it anyway because it "made paper work easier."
Tr. at 106, 113-14.

showed no evidence of damage or distress. Tr. at 53, 55-58, 64-65.

The Administrator alleged that respondent failed to comply with Airworthiness Directive (AD) 86-24-07, which required that the throttle control cable of the aircraft be secured with a pre-drilled AN bolt, castellated nut, and cotter pin. Respondent contends that, although he was unaware of the existence of the AD at the time he performed the maintenance and signed off on the annual inspection, he nonetheless was in compliance with the requirements of that directive. Additionally, he testified that it was the repair station's responsibility for the AD search and sign off. Tr. at 112. He testified that when he replaced the throttle control cable, he put back all the same hardware, except he used a new cotter key. Tr. at 101. Three days later, respondent signed off on the annual inspection, returning the aircraft to service. Tr. at 111-12.

The law judge found the evidence presented showed that, however it had been attached, the throttle control cable separated in flight and the only reasonable explanation for that separation is respondent's failure to properly attach the cable. Tr. at 135. That respondent was unaware of the AD further supported the law judge's determination that respondent did not properly perform the maintenance or the annual inspection, since he could not have checked to determine whether he was installing the required hardware. Id. Finally, the law judge found that the maximum penalty under the FAA Sanction Guidance Table is

justified, since the part at issue was critical for safe flight.

On appeal, respondent contends that his mechanic certificate is not subject to suspension by the Administrator because he performed the work under the authority of the repair station's certificate. We find this argument unpersuasive, at best. That respondent's employer may also have certificate obligations does not relieve him of his responsibility to perform maintenance under the standards that apply to him as a certificate holder. Both respondent and the repair station certificate holder are "persons" for purposes of FAR sections 43.13(a) and 43.15(a). Respondent points to no precedent to support his theory and we are aware of none.

Respondent's other arguments are equally without merit. For example, he claims that the law judge "took command" of his cross examination, prevented respondent from entering evidence into the record, and made up his mind before the hearing was over.⁴ A careful reading of the record, however, fails to support respondent's allegations.

When respondent chose to appear pro se at the hearing, the law judge went to great lengths to thoroughly explain the hearing process to him. See, e.g., Tr. at 6-18. At the close of the Administrator's case-in-chief, the law judge explained to respondent what constitutes a motion to dismiss and asked whether

⁴Respondent's brief also includes argument based on extra-record information. Respondent's Brief at 4. We cannot properly entertain, and have not considered, this argument in our decision.

he wanted to make a motion. Tr. at 97-99. Respondent declined. He waived his right to make an opening statement and offered no witnesses, other than himself. When, during his testimony, respondent sought to have 56 AD's entered into evidence to support his assertion that bolts on airplanes break from time to time,⁵ the law judge suggested that he try to enter into a stipulation with the Administrator's attorney instead, but added that if a stipulation could not be reached, "you'll have to proceed with the AD's individually." Tr. at 102-03. Respondent assured the law judge that he did not want to go over each AD individually. Tr. at 103. Ultimately, respondent and FAA counsel stipulated that bolts on aircraft suffer from wear and tear, at times become brittle, and at times break. Tr. at 104.

Finally, respondent's contention on appeal that the law judge prompted the Administrator to enter the AD into evidence on redirect examination of the inspector is unpersuasive. The inspector testified on direct regarding the AD at issue and its requirements. Tr. at 42. Further, respondent stated in his answer that "the proper attaching hardware was installed in accordance [w]ith SE 79-6 [the service letter that predated the

⁵Respondent testified as follows:

My belief is that this bolt was installed correctly. I believe the throttle cable did come unattached from the arm, but it wasn't because the wrong hardware was installed or the hardware was installed incorrectly. I believe something else happened. What I don't know, but I have fifty-six AD's on hardware, specifically bolts breaking, cracking and failing. And what I'd like to show is that bolts do break.

Tr. at 102.

AD] and AD86-24-07." Respondent's Answer, ¶ 4.

In sum, respondent has presented no valid reason to disturb the law judge's decision.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The initial decision is affirmed; and
3. The 180-day suspension of the respondent's mechanic certificate shall begin 30 days after the service date indicated on this opinion and order.⁶

BLAKEY, Chairman, CARMODY, Vice Chairman, and HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

⁶For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to FAR section 61.19(f).